

REMARKS

Applicants have studied the Office Action mailed May 10, 2005. It is respectfully submitted that the application is in condition for allowance. Reconsideration and allowance of the pending claims in view of the following remarks is respectfully requested.

Rejection of claims 4, 8-9, 24, and 27-29 under 35 USC §102(b):

The Examiner rejected claims 4, 8-9, 24, and 27-29 under 35 USC §102(b) as being anticipated by Takino et al. (WO 98/42835) because Takino et al. teach a nucleotide sequence encoding the entirety of or a portion of the amino acid sequence represented by SEQ ID NO:3 (US 6,255,472, which is the English equivalent of WO 98/42835) and SEQ ID NO:3 is 99.0% identical to SEQ ID NO:2 of the instant application.

In response, Applicants respectfully assert that Takino et al. does not anticipate any of claims 4, 8-9, 24, and 27-29. Compared with SEQ ID NO:2 of the instant application, SEQ ID NO:3 of Takino's US 6,255,472 contains an insertion of 26 additional amino acids residues (YVMTRNWRVGALQRLQFGIVVYVVG) between residues 19 and 20 of SEQ ID NO:2 of the instant application. Therefore, because SEQ ID NO:3 of Takino et al., when compared to SEQ ID NO:2 of the instant application, contains an insertion that is located within (as opposed to if the additional amino acid segment was located at an end of instant SEQ ID NO:2) the corresponding amino acid sequence of instant SEQ ID NO:2, Takino et al. simply does not anticipate claims 4, 8-9, 24, and 27-29. In particular, Takino et al. does not anticipate either of claim 4(a) (which reads "...a nucleotide sequence that encodes a polypeptide having an amino acid sequence comprising SEQ ID NO:2") or claim 24 (which reads "...an amino acid sequence comprising SEQ ID NO:2...").

Therefore, Applicant respectfully request that the Examiner reconsider and withdraw the rejection of claims 4, 8-9, 24, and 27-29 under 35 USC §102(b).

Rejection of claims 4, 8, and 28 under 35 USC §103(a):

The Examiner rejected claims 4, 8, and 28 under 35 USC §103(a) as being unpatentable over Takino et al. (WO 98/42835) taken with Bard et al. (US 5,714,381). Takino et al. teach a nucleotide sequence encoding the entirety of or a portion of the amino acid sequence represented

by SEQ ID NO:3 (US 6,255,472, which is the English equivalent of WO 98/42835) and SEQ ID NO:3 is 99.0% identical to SEQ ID NO:2 of the instant application. Takino et al. teach a vector (plasmid) comprising the nucleotide sequence, however, Takino et al. do not specifically teach a virus (e.g., bacteriophage) comprising the nucleotide sequence. However, at the time the invention was made, Bard et al. teach inserting a nucleotide sequence into a virus such as bacteriophage, and Bard further teaches that nucleic acid sequences are inserted into vectors by methods well known to those of ordinary skill in the art. It would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Takino taken with Bard, namely to produce a virus (bacteriophage) comprising the nucleotide sequence.

Based on the above discussion in response to the rejection under 35 USC §102(b), particularly with respect to the differences between SEQ ID NO:2 of the instant application and SEQ ID NO:3 of Takino et al., it is clear that Takino et al. neither anticipates nor renders obvious the subject matter of instant claims 4, 8, and 28, even in view of Bard et al.

Therefore, Applicant respectfully request that the Examiner reconsider and withdraw the rejection of claims 4, 8, and 28 under 35 USC §103(a).

Conclusions

Claims 4, 8-9, and 24-29 remain pending.

The Examiner indicated in the May 10, 2005 Office Action that claims 25 and 26 are in condition for allowance.

In view of the above remarks, Applicants respectfully submit that the application and claims are in condition for allowance, and request that the Examiner reconsider and withdraw the objections and rejections. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is invited to call the undersigned agent at (240) 453-3812 should the Examiner believe a telephone interview would advance prosecution of the application.

Respectfully submitted,

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